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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Charles Jason Moran,

Plaintiff,

v.

Piper Jaffray & Co.,
d/b/a Piper Jaffray,

Defendant.

CASE NO: 08-cv-3188

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION AND MEMORANDUM OF LAW AND POINTS OF AUTHORITIES

Date: August 22, 2008
Time: 9:00 a.m.
Place: Department 2, 17th Floor
Judge: Hon. Jeffrey S. White

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NOTICE OF MOTION AND MOTION

TO DEFENDANT AND ITS ATTORNEYS OF RECORD

PLEASE TAKE NOTICE THAT on August 22, 2008, at 9:00 a.m. or as soon thereafter as may be heard, in Department 2, 17th Floor, the Honorable Jeffrey S. White presiding, in the above entitled Court at 450 Golden Gate Ave., San Francisco, California, Plaintiff Charles Jason Moran will, and hereby does, move the Court for issuance of a preliminary injunction.

Plaintiff seeks an order enjoining the operation of Sections 2(d)(iii) and 2(d)(iv) of the 2007 and 2008 Restricted Stock Agreement between Plaintiff and Defendant, and Sections 2(c)(ii), 2(c)(iii) and 2(c)(v) of the 2006 Restricted Stock Agreement between Plaintiff and Defendant.

This motion is based on this notice of motion and motion, as well as the accompanying memorandum of law and points of authorities, the Complaint and accompanying exhibits, the Declaration of Charles Jason Moran and accompanying exhibits, and the Declaration of Matthew C. Helland and accompanying exhibits, and such further evidence as may be provided prior to or at the time of hearing.

I. INTRODUCTION

Plaintiff Charles Jason Moran ("Moran" or "Plaintiff") is a former employee of Defendant whose employment with Defendant ended earlier this year. As a part of his compensation from Defendants, Moran earned Restricted Shares of Piper Jaffray Stock. Under certain Restricted Stock Agreements between Moran and Defendant, Defendant has the purported right to cancel Moran's shares unless he signs an agreement not to compete. The agreements also contain a non-solicitation provision. Moran contends that these provisions are void and unenforceable under California law. Moran therefore comes before this Court seeking a preliminary injunction preventing Defendant from canceling his restricted shares before the legality of the agreements is resolved. Because there is a very high likelihood the provisions are void under California law, and because Moran will suffer great harm that cannot be compensated in money damages if Piper Jaffray enforces the forfeiture agreement, Moran's request for a preliminary injunction should be granted.

Although Moran generally must arbitrate his claims through the Financial Industry Regulatory Authority ("FINRA"), FINRA arbitration rules allow the Court to decide this motion. (See Helland Decl. Exh. 3.) Upon a decision on Plaintiffs' request for a preliminary injunction, Moran with withdraw this action and proceed in arbitration, as provided for by FINRA rules.

II. STATEMENT OF ISSUES TO BE DECIDED

The issue to be decided in this motion is whether Plaintiff is entitled to a preliminary injunction enjoining the operation of Sections 2(d)(iii) and 2(d)(iv) of the 2007 and 2008 Restricted Stock Agreement between Plaintiff and Defendant, and Sections 2(c)(ii), 2(c)(iii) and 2(c)(v) of the 2006 Restricted Stock Agreement between Plaintiff and Defendant.

III. FACTUAL BACKGROUND

Moran began working for Piper Jaffray as an investment banker in April of 1999. (Compl. ¶ 3.) Moran periodically entered into yearly Restricted Stock Agreements with Defendant (the "Agreements"). (See, e.g., Compl. Exhs. A-C.) The format of the agreement changed slightly in 2007. (See Id.) The Agreements discuss how and when an employee's restricted stock shares will vest. (See Id.) The Agreements also explain the ways in which the restricted shares can be forfeited. (Id.) Under the 2007 and 2008 Agreements, an employee's restricted stock shares can be forfeited if the employee fails to sign a Post-Termination Agreement with Defendant upon leaving employment. (Compl. Exhs. B & C, Section 2(d).) The contemplated Post-Termination Agreement obliges Moran to refrain from engaging in certain prohibited activities, such as ". . . becom[ing] connected as an officer, employee, partner, director, consultant, independent contractor, or otherwise with a Talent Competitor . . . ." (Id. at Section 2(d)(iv).) A Talent Competitor is defined as:

> any corporation, partnership, limited liability company or other business association, organization or entity or person of any kind whatsoever that engages in the investment banking, securities brokerage or investment management business, including, but not limited to, investment banks, sell-side broker dealers, mergers and acquisitions or strategic advisory firms, merchant banks, hedge funds, private equity firms, venture capital firms, asset managers and investment advisory

firms.

(Id.) The 2006 Agreement has a slightly different non-compete provision, giving Piper Jaffray the right to cancel Plaintiff's shares if he gains subsequent employment in a position "involv[ing] duties, responsibilities or expertise similar to that of the Employee's position of employment with the Company or an Affiliate at the time of the Employee's termination of such employment," (Compl. Exh. A, Section 2(c)(iii)), or becomes employed by a "competing business." (Id., section 2(c)(ii).) (collectively with Compl. Exhs. B & C, Section 2(d)(iv), the "non-compete provisions"). All three agreements contain provisions restricting Moran's contact with Defendant's current or former customers and clients. (See Compl. Exh. A, Section 2(c)(v); Compl. Exhs. B, C, Section 2(d)(iii).) The Agreements also contain a choice of law provision which states that the law of Delaware will govern the Agreement. (Compl. Exhs. A-C, Section 11.)

Moran's employment with Piper Jaffray ended on April 14, 2008. (Compl. ¶ 8.) Moran has not signed a Post Termination Agreement with Piper Jaffray. (Id. at ¶ 9.) Moran estimates that he has approximately $392,800 in restricted shares that are subject to forfeiture at the hands of Defendant. (Moran Decl. ¶ 3.) In this motion, he seeks a preliminary injunction enjoining Defendant from canceling those shares.

On July 15, Moran filed his request for arbitration with the Financial Industry Regulatory Authority ("FINRA"), f/n/a National Association of Securities Dealers ("NASD"). (Helland Decl. ¶ 2.) Moran pursues his request for a preliminary injunction pursuant to FINRA Code of Arbitration Procedure for Industry Disputes § 13804, allowing a party otherwise required to submit to FINRA arbitration to pursue a temporary injunctive order from any court of competent jurisdiction. (See Helland Decl. Exh. 3.)

IV. ARGUMENT

a. PRELIMINARY INJUNCTION STANDARD

The decision to issue a preliminary injunction rests in the sound discretion of the trial court. Sports Form Inc. v. United Press Int'l Inc., 686 F.2d 750, 752 (9th Cir. 1982). A party moving for a preliminary injunction must show either (1) a combination of probable success on the merits and the possibility of irreparable injury, or (2) that serious questions are raised and the

balance of hardships tips sharply in favor of the movant. Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc., 240 F.3d 832, 839 (9th Cir.2001). "These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases." Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc., 204 F.3d 867, 874 (9th Cir. 2000). Here, the Court should grant Plaintiffs' request for a preliminary injunction because there is a very high likelihood Plaintiff will succeed on the merits and there is the possibility of irreparable injury without a preliminary injunction.

b. THERE IS A HIGH LIKELIHOOD THAT PLAINTIFF WILL SUCCEED ON THE MERITS

i. California Law Will Apply To The Agreement.

It is proper for this Court to analyze the agreements under California law, notwithstanding the choice of law provision selecting Delaware law. In diversity cases, federal courts must apply the choice-of-law rules of the forum state. Estate of Darulis v. Garate, 401 F.3d 1060, 1062 (9th Cir.2005). Several California courts have invalidated choice of law provisions purporting to apply out-of-state law in similar employment agreements. See, e.g., Application Group, Inc. v. Hunter Group, Inc., 61 Cal. App. 4th 881, 902 (1998) (holding that California law would govern a challenge to a non-compete under Section 16600, even though the agreement stated Maryland law would apply); Frame v. Merrill Lynch, Pierce, Fenner & Smith, 20 Cal. App. 3d 668, 673 (1971) (applying California law to invalidate a forfeiture clause under Section 16600, notwithstanding the fact that the contract specified that New York law would govern the agreement); Davis v. Advanced Care Techs. Inc., 2007 WL 2288298, at *9 (E.D. Cal. Aug. 8, 2007) (invalidating a choice of law provision selecting the law of Connecticut and applying California law in a case involving a non-compete agreement).

In Application Group, the appellate court set forth a framework for analyzing choice-of-law provisions in employment contracts. First this Court must determine whether the chosen jurisdiction has a "substantial relationship" to the parties and transaction in question, and whether there is a "reasonable basis" for the choice of law provision. Application Group, 61 Cal. App. 4th at 897 (citing Nedlloyd Lines B.V. v. Super. Ct. of San Mateo County, 3 Cal. 4th 459, 466

(1992)). When the employer is incorporated in the chosen state, the "substantial relationship" and "reasonable basis" requirements are satisfied. Id. at 897. The court must next examine whether the selected jurisdiction's law is contrary to a fundamental state policy. Id. If there is no fundamental conflict, California applies the chosen state's law. Id. If there if a fundamental conflict with California state policy, the court next determines whether California has a materially greater interest than the state selected in the choice of law provision. Id. If California has a materially greater interest than the designated state, the choice of law provision will not be enforced. Id.

1. Delaware Law Is Contrary To Fundamental California State Policy.

Under Frame, Application Group, and Davis, the choice of law provision in the Agreement should not be enforced. Plaintiff concedes that the "substantial relationship" and "reasonable basis" tests are met, because Piper Jaffray is incorporated in Delaware. See Application Group, 61 Cal. App. 4th at 884; Davis, 2007 WL 2288298, at *4. However, Delaware's law regarding agreements not to compete is contrary to the fundamental public policy of California.

Delaware courts will uphold non-compete agreements as long as the covenants are reasonable in scope and time and are designed to protect the employer's economic interests. See, e.g, Faw, Casson, & Co. v. Cranston, 375 A.2d 463, 465 (Del. Ch. 1977); Knowles-Zeswitz Music, Inc. v. Cara, 260 A.2d 171, 174-75 (Del. Ch. 1969). In California, on the other hand, "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." Cal. Bus. Prof. Code § 16600 (hereafter "section 16600"). Pursuant to this policy, non-compete agreements are void in California unless the restraints are necessary to protect employer trade secrets. Muggill v. Reuben H. Donnelley Corp, 62 Cal. 2d 239, 242 (1965); Metro Traffic Control, Inc. v. Shadow Traffic Network, 22 Cal. App. 4th 853, 859 (1994).

Several courts have held that section 16600 represents a "strong public policy" of the state of California. See, e.g., Application Group, 61 Cal. App. 4th at 900; KGB, Inc. v. Giannoulas,

104 Cal. App. 3d 844, 848 (1980); Ware v. Merrill Lynch, Pierce, Fenner & Smith, 24 Cal. App. 3d 35, 43 (1972); Frame, 20 Cal. App. 3d at 673; Latona v. Aetna U.S. Healthcare, Inc., 82 F. Supp. 2d 1089, 1093 (C.D. Cal., 1999). In accordance with section 16600, California courts recognize that "the interests of the employee in his own mobility and betterment are deemed paramount to the competitive business interest of the employers." Metro Traffic Control, Inc., 22 Cal. App. 4th at 860 (internal citation omitted). Courts have also recognized that employees generally occupy a weak bargaining position vis-a-vis their employers. The KGB, Inc. court stated: "The average, individual employee has little but his labor to sell . . . . He is often in urgent need of selling it and in no position to object to boiler plate restrictive covenants placed before him to sign . . . . His individual bargaining power is seldom equal to that of his employer." KBG, Inc., 104 Cal. App. 3d at 849.

Because California's public policy against restraints of trade is so strong and fundamental, California courts regularly reject choice of law provisions in employment agreements such as Plaintiff's. See e.g., Application Group, 61 Cal. App. 4th at 902; Frame, 20 Cal. App. 3d at 673; Davis, 2007 WL 2288298, at *9. This Court must follow Application Group and Frame and recognize that Delaware law is contrary to fundamental California public policy regarding restraints of trade and employee mobility.

2. California Has A Greater Interest Than Delaware In This Case Because The Agreement Will Be Enforced In California And Plaintiff Lived And Worked In California.

Non-compete agreements like the one at issue here preclude California employers from being able to effectively compete for talented employees like Plaintiff. See Application Group, 61 Cal. App. 4th at 901. The Application Group court stated that section 16600 is "a statement of California public policy which ensures California employers will be able to compete effectively for the most talented, skilled employees in their industries, wherever they reside." Id. In Application Group, the court applied California law notwithstanding the fact that the plaintiff had not resided in or visited California while she was employed by defendant. Id. at 887. The Court found that enforcing the choice of law provision would improperly "allow an out-of-state

employer/competitor to limit employment and business opportunities in California." Id. at 902. The non-compete clause in this case will have the same affect on California employers. If Plaintiff is required to sign the contemplated non-compete agreement, Delaware law will allow Defendant to improperly limit employment and competition within the state of California.

Although Application Group provides the basis for striking the choice of law provision, there is even greater justification for applying California law in this case. Here, Plaintiff lived and worked in California during his entire employment with Defendant. (Moran Decl. ¶ 2.) Plaintiff interviewed for his job in San Francisco and he worked out of Piper Jaffray's office in San Francisco his entire tenure with the company. (Id.) This case is therefore similar to Davis, where the court determined that California had a materially greater interest in the case's outcome because the plaintiff resided in California during the tenure of his employment and he continued to reside in California after his employment with the defendant ended. See Davis, 2007 WL 2288298, at *7. This Court should come to the same conclusion here. Plaintiff has lived and still lives in California, subject to California law, and worked for Defendant in California for 9 years. As the Davis Court recognized, California law should govern the agreement.

Because Delaware law is contrary to a fundamental pubic policy of California and California has a materially greater interest in the matter, California law should apply to the dispute.

ii. The Forfeiture Provision Of The Non-Competes Is An Unlawful Restraint Of Trade Under Section 16600.

The non-compete provisions of the Agreements are void under California law because they unlawfully restrict Plaintiff's ability to earn a living in his chosen profession. California has a policy of favoring open competition. Howard v. Babcock, 6 Cal. 4th 409, 416 (1993). Section 16600 prohibits non-compete agreements that place a restraint on trade, unless the restraint is necessary to prevent disclosure of trade secrets. Cal. Bus. Prof. Code § 16600; Muggill, 62 Cal. 2d at 242; Metro Traffic Control, 22 Cal. App. 4th at 859. The non-compete provisions violate California law because they restrain Plaintiff "from engaging in a lawful profession, trade, or business." Cal. Bus. Prof. Code § 16600.

Section 16600 and the public policy considerations underlying that statute apply to agreements that place a price on competing. See Howard, 6 Cal. 4th at 416. When a former employee is forced to forfeit earned benefits upon gaining subsequent employment, a restraint is placed on the former employee's ability to engage in lawful business. Muggill, 62 Cal. 2d at 243; see also Chamberlain v. Augustine, 172 Cal. 285, 288 (1916) (holding that an agreement which required defendant to pay plaintiff $5,000 in liquidated damages in order to work with a competing company was an invalid restriction on trade). Therefore, forfeiture clauses in non-compete agreements are invalid as unlawful restraints on trade and employee mobility. See, e.g., Muggill, 62 Cal. 2d at 243; Ware, 24 Cal. App. 3d at 43; Frame, 20 Cal. App. 3d at 673.[1]

The non-compete provisions are void under Muggill, Ware and Frame. They broadly and unlawfully inhibit Plaintiff from engaging in lawful business in violation of section 16600. The Agreement language at issue is quite similar to the agreement language used in Ware and Frame. The provision in both Ware and Frame stated: "A Participant who . . . voluntarily terminates his employment with the Corporation . . . and engages in an occupation which is . . . competitive with the Corporation . . . shall forfeit all rights to any benefits already due or to become due . . . ." Ware, 24 Cal. App. 3d at 39; Frame, 20 Cal. App. 3d at 673 n.1. Here, Section 2(d)(iv) of the 2007 and 2008 Agreement at issue calls for a forfeiture of restricted stock shares if the employee becomes employed with a Talent Competitor, which is defined as:

> any corporation, partnership, limited liability company or other business association, organization or entity or person of any kind whatsoever that engages in the investment banking, securities brokerage or investment management business, including, but not limited to, investment banks, sell-side broker dealers, mergers and acquisitions or strategic advisory firms, merchant banks, hedge funds, private equity firms, venture capital firms, asset managers and investment advisory

[1] Ware and Frame are especially instructive in the instant case, because both cases involved former employees of Merril Lynch, a competitor of Piper Jaffray. Ware, 24 Cal. App. 3d at 43; Frame, 20 Cal. App. 3d at 673. Both cases invalidated agreements by which the employee would have forfeited his profit sharing benefits upon gaining subsequent employment with a competitor. Ware, 24 Cal. App. 3d at 43; Frame, 20 Cal. App. 3d at 673. California principals of unfair competition dictate that the law should be applied equally to competing businesses.

firms.

(Ex. A, Section 2(d)(iv).) If he signs such an agreement, Plaintiff would be totally foreclosed from working in the securities, investment banking, and asset management fields.[2]

Ware and Frame construe agreements very similar to Plaintiff's. The cases were between employees in Plaintiff's industry and a defendant who competes with Piper Jaffray. Under these cases, Plaintiff has a very high likelihood of success.

iii. The Client Non-Solicitation Agreements Are Unenforceable Because They Are Not Necessary To Protect Trade Secrets.

"Antisolicitation covenants are void as unlawful business restraints except where their enforcement is necessary to protect trade secrets." Moss, Adams, & Co. v. Shilling, 179 Cal. App. 3d 124, 130 (1986). "[I]n the absence of a protectable trade secret, the right to compete fairly outweighs the employer's right to protect clients against competition from former employees." American Credit Indemnity Co. v. Sacks, 213 Cal.App.3d 622, 634 (1989).

Section 2(d)(iii) of the 2007 and 2008 Agreements, and Section 2(c)(v) of the 2006 agreement would prevent Plaintiff from contacting any person or business who was a customer or client of Defendant in the past three years. (See Compl. Exhs. A- C.) The provisions are void and unenforceable under Section 16600 because they are not "necessary to protect trade secrets." Moss, Adams & Co., 179 Cal. App. 3d at 130. The provisions would prevent Plaintiff from working with a client of Defendant from three years ago, who now would like to work with a different bank more suited to the client's current needs; that is an illegal restraint on trade. Under Moss, Adams & Co. and American Credit, Defendant is only allowed to prevent Plaintiff from using "trade secret customer lists" to compete. Moss, Adams & Co., 179 Cal. App 3d at 130, American Credit Indemnity Co., 213 Cal. App. 3d at 634. Where "the names and addresses of persons, firms and corporations using the type of products sold by plaintiff are *commonly known to the trade*," "free competition prevails." American Credit Indemnity Co., 213 Cal. App. 3d at 633-34 (quoting Continental Car-Na-Var Corp. v. Moseley, 24 Cal.2d 104, 108 (1944) (emphasis

[2] Similarly, the 2006 agreement forecloses Plaintiff from taking any employment position whatsoever that involves "duties, responsibilities or expertise similar to" Moran's position with Defendant. (Exh. A.)

in original).[3] Because the non-solicitation provisions are not restricted to the use of "trade secret customer lists," they are overbroad and unenforceable.

The non-solicitation provisions are not necessary to protect Defendant's trade secrets because other provisions of the agreements accomplish that accomplish that purpose. See Compl. Exhs. B & C, sections 2(d)(i); Compl. Exh. A, section 2(c)(i) (prohibiting the use, disclosure, or misappropriation of trade secrets). Putting aside, for the purposes of this motion, the question of whether these provisions are overbroad under California's Uniform Trade Secret Act ("CUTCA," Cal. Civ. Code § 3426, et seq.)[4] the trade secret sections of the agreements protect Defendants' trade secrets to the fullest extent allowable under California law. To the extent the non-solicitation provisions seek to do something more, they are overbroad and unenforceable. See Moss, Adams & Co., 179 Cal. App 3d at 130, American Credit Indemnity Co., 213 Cal. App. 3d at 634. Plaintiff has a high likelihood of success in challenging the non-solicitation provisions.

c. THE COURT SHOULD GRANT PLAINTIFF'S MOTION BECAUSE THERE IS THE POSSIBILITY OF IRREPARABLE INJURY.

Plaintiff has shown a very high likelihood of success on the merits. Therefore, his showing of irreparable harm need not be as strong as it would if his chances of success were minimal. See Prudential Real Estate, 204 F.3d at 874. Because Plaintiff will suffer significant irreparable injury if Defendant cancels his stock, the Court should grant his request for a preliminary injunction.

1. Plaintiff Will Suffer A Greater Degree Of Harm Than Will Defendant If An Injunction Is Not Issued.

Defendant's enforcement of these agreements will cause Plaintiff great harm. Under the 2007 and 2008 Agreements Defendant purportedly has the right to forfeit Plaintiff's restricted stock shares at any time, because Plaintiff has not signed the contemplated post-termination

[3] Similarly, the 2006 agreement prevents Plaintiff from soliciting "any customers, clients or accounts of the Company or any Affiliate or otherwise seeks to divert such customers, clients or accounts away from the Company or any Affiliate." (Exh. A, section 2(c)(v).)

[4] Plaintiff does not waive any arguments he may have under the CUTCA regarding these agreements. For the purposes of this motion, it is sufficient to say that the agreement protects Defendant's trade secrets to the extent allowable under the law.

agreement. Likewise, Defendant has the purported right under the 2006 agreement to cancel Plaintiffs' shares if he works in a similar capacity with another employer. Plaintiff stands to lose approximately $392,800 worth of stock if Defendant cancels his shares. (Moran Decl. ¶ 3.)

By contrast, Defendant will not suffer any significant harm if the Court issues a preliminary injunction. The law of unfair competition will adequately protect Defendant's legitimate business interests, such as trade secrets and confidential information – even without a contractual provision. See Moss, Adams, & Co., 179 Cal. App. 3d at 130. Further, the agreements contain other provisions protecting Defendants' trade secrets. (See Compl. Exhs. B & C, sections 2(d)(i); Compl. Exh. A, section 2(c)(i).) Thus, Defendant is protected, and will continue to be protected, to the fullest extent allowable under California law, even if the Court grants this injunction.

Further, enforcing the provision (i.e., canceling Plaintiffs' stock) does nothing to further Defendant's legitimate interests. If Defendant cancels the stock it will be in the same position relative to Plaintiff that it is in now. The Court should therefore enjoin Defendant from taking this irreversible action until the enforceability of the agreements is finally determined.

2. The Harm To Plaintiff Will Be Irreparable

Once Defendant cancels Plaintiffs' shares, the shares cannot be reissued. Defendant's long-term incentive plan provides for the issuance of stock to employees, officers, consultants and directors. (Helland Decl. Ehx. 1, section II(m).) Plaintiff does not currently fall into any of these categories, nor does he have any intention of becoming an employee, officer, consultant or director of Defendant. Therefore, if Defendant decides to exercise its purported forfeiture rights, the action will be permanent and irreversible.

Money damages cannot afford Plaintiff an adequate remedy for the loss of this stock. With possession of the stock, Plaintiff can spread his tax obligation over three years as his shares vest. If he receives a lump sum settlement, he loses the benefit of tax deferral. Additionally, the value of Plaintiff's shares presently grows on a tax deferred basis. If he receives damages, that money cannot grow tax-deferred in Piper Stock. Finally, any settlement Plaintiff would receive down the road would be taxed completely as ordinary income. Plaintiff would therefore lose the

benefit of the capital gains tax rate on any post-vesting increase in share price.

Moreover, although Plaintiff would be free to purchase Piper Jaffray stock on the open market with damages he may receive, he would be forced to buy these shares with after-tax dollars. This would result in the purchase of fewer shares. This effect is exacerbated as Plaintiff believes that Defendant' stock is trading at a low value (Moran Decl. ¶ 5.) and that there is a reasonable probability that stock price on the vesting date will be greater than the stock price on which the stock was granted. Plaintiff cannot go back in time to purchase shares at the price at which they would otherwise vest.

Likewise, it is impossible to place a present-day value on unvested shares that will vest years in the future. Over the last 4 years, the price of Piper Jaffray stock has ranged from below $30 a share to over $70 a share. (Helland Decl. Exh. 2.) The inherent risks, and rewards, of stock ownership rest on the premise that future returns are unknown and subject to influence by a host of worldwide factors. It is impossible to predict what the share price will be when Plaintiff's shares eventually vest. Likewise, Plaintiff cannot predict today how he will dispose of his shares when they eventually do vest. When, as here, the nature of Plaintiffs' injuries makes damages especially difficult to calculate, damages are inadequate. See In re Estate of Ferdinand Marcos, Human Rights Litigation, 25 F.3d 1467, 1479 (9th Cir. 1994) (citing Roland Machinery Co. v. Dresser Industries, 749 F.2d 380 (7th Cir.1984)); see also Gilder v. PGA Tour, Inc., 936 F.2d 417, 423 (9th Cir. 1991) ("where the threat of injury is imminent and the measure of that injury defies calculation, damages will not provide a remedy at law"); Treasure Valley Potato Bargaining Ass'n v. Ore-Ida Foods, Inc., 497 F.2d 203, 218 (9th Cir. 1974) ("[O]ne reason for issuing an injunction may be that damages, being immeasurable, will not provide a remedy at law.").

Because money damages cannot replace the tax and timing advantages inherent in stock ownership, the Court should grant Plaintiff's request for a preliminary injunction.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court issue a preliminary injunction enjoining the operation of Sections 2(d)(iii) and 2(d)(iv) of the 2007 and 2008

Agreements, and Sections 2(c)(ii), 2(c)(iii) and 2(c)(v) of the 2006 Agreement.

Dated: July 17, 2008

NICHOLS KASTER & ANDERSON, LLP

By: s/Matthew C. Helland
Matthew C. Helland

NICHOLS KASTER & ANDERSON, PLLP
Attorneys for Plaintiffs and the Putative Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Charles Jason Moran,

Plaintiff,

v.

Piper Jaffray & Co.,
d/b/a Piper Jaffray,

Defendant.

CASE NO: 08-cv-3188 JSW

[proposed] ORDER GRANTING PRELIMINARY INJUNCTION

Date: August 22, 2008
Time: 9:00 a.m.
Place: Department 2, 17th Floor
Judge: Hon. Jeffrey S. White

This matter having come before the Court on Plaintiff's motion for a preliminary injunction, and having reviewed the submissions of the parties and considered the parties' oral arguments, and for good cause shown, THE COURT HEREBY GRANTS Plaintiff's motion for a preliminary injunction. Defendant IS HEREBY ENJOINED from canceling, or in any way causing the forfeit of, Plaintiff's restricted shares of stock in Piper Jaffray & Co., until such time as a court or arbitration panel shall adjudicate the parties' rights under the parties' Restricted Stock Agreements.

IT IS SO ORDERED.

Dated; _____

_____
Honorable Jeffrey S. White
United States District Court Judge